

**Deposition Designations for:
PETER LOCKWOOD
May 4, 2009**

Deposition Designation Key

**Arrowood = Arrowood Indem. Co.
f/k/a Royal Indem. Co. (Light Green)**

BNSF = BNSF Railway Co. (Pink)

**Certain Plan Objectors “CPO” = Government Employees Insurance Co.; Republic Insurance Co.
n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance
Co.; Fireman’s Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurta; and Allianz
SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich
International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and
related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal
Belge SA (Orange)**

CNA = Continental Cas. Co & Continental Ins. Co. (Red)

**FFIC = Fireman Funds Ins. Co. (Green)
FFIC SC = Fireman Funds Ins. Co. “Surety Claims” (Green)**

GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.

Libby = Libby Claimants (Black)

OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)

PP = Plan Proponents (Blue)

Montana = State of Montana (Magenta)

Travelers = Travelers Cas. and Surety Cos. (Purple)

UCC & BLG = Unsecured Creditors’ Committee & Bank Lenders Group (Lavender)

**AFNE = Assume Fact Not in
Evidence
AO = Attorney Objection
BE = Best Evidence
Cum. = Cumulative
Ctr = Counter Designation
Ctr-Ctr = Counter-Counter
ET = Expert Testimony
F = Foundation
408 = Violation of FRE 408
H = Hearsay
IH - Incomplete Hypothetical**

**L = Leading
LA = Legal Argument
LC = Legal Conclusion
LPK - Lacks Personal Knowledge
LO = Seeking Legal Opinion
NT = Not Testimony
Obj: = Objection
R = Relevance
S = Speculative
UP = Unfairly Prejudicial under Rule 403
V = Vague**

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE DISTRICT OF DELAWARE

3
4 In Re: : Chapter 11
5 W.R. GRACE & CO., et al, : Case No.
6 : 01-01139 JKF
7 Debtors : (Jointly
 : Administered)

8 - - -
9 Monday, May 4, 2009
10 - - -

11 Continuation of oral
12 deposition of PETER VAN N. LOCKWOOD,
13 ESQUIRE, taken pursuant to notice, was
14 held at the offices of CAPLIN & DRYSDALE,
15 One Thomas Circle N.W., Suite 1100,
16 Washington, DC 20005, commencing at
17 12:05 p.m., on the above date, before
18 Lori A. Zabielski, a Registered
19 Professional Reporter and Notary Public
20 in and for the Commonwealth of
21 Pennsylvania.

22 - - -
23 MAGNA LEGAL SERVICES
24 Seven Penn Center
 1635 Market Street
 8th Floor
 Philadelphia, Pennsylvania 19103

<p style="text-align: right;">Page 478</p> <p>1 THE WITNESS: That's 2 unanswerable, because assuming 3 that you are asking about the 4 Grace Trust, which is what we are 5 here to talk about, the Grace 6 Trust, A, doesn't exist; B, 7 doesn't have any operating 8 history; C, hasn't established 9 what the procedures and personnel 10 to handle claims are; and, D, 11 depending upon the complexities of 12 individual claims subject to 13 individual review and the back and 14 forth between the Trust claims 15 handling personnel and the 16 plaintiff and plaintiff's lawyer, 17 there is no set period of time 18 that any individual claim would 19 require for individual review that 20 I am aware of. 21 BY MR. COHN: 22 Q. So is it your testimony that 23 the Asbestos PI Committee drafted this 24 TDP and proposed it as part of a Plan</p>	<p style="text-align: right;">Page 480</p> <p>1 that is as efficient in processing 2 claims through individual review 3 or otherwise as is reasonably 4 possible and could be done at a 5 reasonable cost per claim. Beyond 6 that, I really don't know anything 7 more to say. 8 BY MR. COHN: 9 Q. If a claimant receives an 10 offer upon individual review and chooses 11 not to accept the offer, what is his next 12 step? 13 MR. FINCH: Object to form. 14 THE WITNESS: It's some form 15 of mediation and 16 binding/nonbinding arbitration as 17 the steps set forth in the TDP. I 18 am riffling through the pages at 19 the moment to find it. 20 Section 5.10 of the TDP 21 addresses ADR procedures that the 22 Trust is to implement, and, to my 23 knowledge, I think that's the next 24 step after there is a failure to</p>
<p style="text-align: right;">Page 479</p> <p>1 with no expectation whatsoever as to the 2 time frames that it would take to process 3 claims upon individual review? 4 MR. SCHIAVONI: Objection to 5 form with regard to the term 6 "committee" and whether that's 7 intended to include Mr. Cohn's 8 clients or not. 9 MR. FINCH: Object to form. 10 THE WITNESS: I am not aware 11 of any expectations of the 12 committee on that subject that 13 aren't contained in the TDP, and I 14 don't recall seeing any in the 15 TDP. You might want to ask 16 Mr. Inselbuch that question. But 17 I am not aware of any, and I don't 18 think there are any. 19 I do believe the committee 20 had a general expectation that the 21 trustees, as part of their 22 fiduciary obligations to claimants 23 under this Trust, are expected to 24 create a claims handling structure</p>	<p style="text-align: right;">Page 481</p> <p>1 agree in individual review between 2 the claimant and the Trust. 3 Again, Mr. Inselbuch 4 probably has more familiarity with 5 Trust practices than I do. 6 BY MR. COHN: 7 Q. All right. I think what I 8 will do is there are a whole line of such 9 questions, but I will wait for 10 Mr. Inselbuch, if your testimony is that 11 he would be best equipped to answer those 12 questions. 13 A. I think it is a fair 14 statement that Mr. Inselbuch has had a 15 more detailed involvement in the drafting 16 of the TDP and more personal experience 17 in the operation of other trusts that, to 18 some extent, this Trust is modeled after. 19 So, to that extent, I think you are 20 probably correct. 21 MR. FINCH: Can I confer 22 with my client for just a second, 23 Mr. Cohn? 24 MR. COHN: Sure.</p>

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1 MR. FINCH: Let's go off the
2 record.

3 (There was a discussion held
4 off the record at this time.)

5 MR. FINCH: Back on the
6 record.

7 THE WITNESS: Mr. Finch
8 reminded me that, as I testified
9 on Friday, there are certain
10 provisions of the TDP that are
11 unique to this TDP and, therefore,
12 have not been the subject of prior
13 experience with other trusts and,
14 in particular, Sections 5.12 and
15 5.13, which I testified about at
16 some length.

17 I have probably had at least
18 as great, if not a greater, role
19 in the creation of those sections
20 that Mr. Inselbuch did. So I
21 don't know -- to suggest that
22 there are no questions that you
23 can ask about the TDP, that I
24 might not have as much or more

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1 what I would regard as insurance law,
2 including a fair amount about
3 comprehensive or CGL policies.

4 Q. And do you understand, at
5 least in general terms, the distinction
6 between products/completed operations
7 claims, on the one hand, and
8 non-products/non-completed operations
9 claims, on the other?

10 MR. FINCH: Object to form.

11 MS. DeCRISTOFARO: Object to
12 form.

13 MR. FINCH: Why don't you
14 define it so he knows exactly what
15 you are talking about.

16 You can answer. Object to
17 form.

18 THE WITNESS: If you are
19 using those terms as they are used
20 in comprehensive general liability
21 policies, I think I have a general
22 understanding of that, but I
23 certainly would not profess to be
24 an expert on the subject.

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1 knowledge than Mr. Inselbuch.
2 But, by and large, the provisions,
3 such as Section 5.10, that we were
4 just discussing that are fairly
5 what I would call standard TDP
6 provisions, my answer stands, that
7 he would be more knowledgeable on
8 those than I would.

9 BY MR. COHN:

10 Q. Thank you.

11 In that case, let's turn to
12 insurance. Have you had occasion to
13 familiarize yourself with Grace's
14 insurance coverage for asbestos PI
15 claims?

16 A. Only at a pretty general
17 level as was demonstrated on Friday.

18 Q. Are you generally familiar
19 with comprehensive general liability
20 insurance?

21 A. In the course of my work in
22 these bankruptcy cases over the last 15
23 or 20 years, I have had occasion to learn
24 in a non-expert capacity a fair amount of

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1 BY MR. COHN:

2 Q. And would you mind if when I
3 refer to products/completed operations
4 claims under a standard CGL policy, if I
5 just use the term "products claims"?

6 A. That's fine.

7 Q. And would you mind if when I
8 refer to non-products/non-completed
9 operations claims under a standard CGL
10 policy, if I just call them "non-products
11 claims"?

12 A. That's fine.

13 MR. SCHIAVONI: We will
14 object, though, Dan.

15 BY MR. COHN:

16 Q. Is it your understanding --
17 strike that.

18 Is it the understanding of
19 the Asbestos PI Committee that the Libby
20 claims hold non-products claims?

21 A. I don't think the Asbestos
22 Claimants Committee has an understanding
23 on that subject. We understand that the
24 Libby claimants contend that they have

<p>Libby</p> <p>PP Obj: F</p> <p>Page 486</p> <p>1 non-products claims.</p> <p>2 Q. Is it the committee's</p> <p>3 understanding that other asbestos PI</p> <p>4 claimants besides the Libby claimants</p> <p>5 hold non-products claims?</p> <p>6 MR. SCHIAVONI: I object to</p> <p>7 form; again, vague and ambiguous</p> <p>8 with regard to the committee.</p> <p>9 Mr. Cohn, are you asking</p> <p>10 whether your own clients</p> <p>11 understand this or by majority</p> <p>12 vote or before -- how?</p> <p>13 MR. COHN: Thank you,</p> <p>14 Mr. Schiavoni.</p> <p>15 You may answer the question.</p> <p>16 THE WITNESS: It is the</p> <p>17 committee's understanding that</p> <p>18 there are an unknown number of</p> <p>19 present and future claimants</p> <p>20 whose --</p> <p>21 MR. SCHIAVONI: We also</p> <p>22 object, that the question calls</p> <p>23 for waiver of the attorney-client</p> <p>24 privilege and any common interest</p>	<p>Page 488</p> <p>1 committee knows from public</p> <p>2 sources. He is not testifying</p> <p>3 about the committee's work product</p> <p>4 or what communications may be</p> <p>5 privileged between the committee</p> <p>6 members, on the one hand, and</p> <p>7 counsel, on the other.</p> <p>8 MR. SCHIAVONI: He's</p> <p>9 testifying about -- he's a lawyer.</p> <p>10 He's testifying about what a</p> <p>11 lawyer thinks and what a group of</p> <p>12 lawyers think --</p> <p>13 MR. FINCH: No, he is not.</p> <p>14 MR. SCHIAVONI: -- about a</p> <p>15 legal issue.</p> <p>16 MR. FINCH: No, he is not.</p> <p>17 MR. SCHIAVONI: All right.</p> <p>18 We can brief it later.</p> <p>19 THE WITNESS: The</p> <p>20 committee's position, to my</p> <p>21 knowledge, on this subject has</p> <p>22 been expressed in briefs filed in</p> <p>23 the court, and I will reiterate</p> <p>24 that position as expressed in</p>
<p>Page 487</p> <p>1 privilege.</p> <p>2 MR. FINCH: We disagree with</p> <p>3 that assertion. He didn't ask</p> <p>4 about communications with the</p> <p>5 committee or its counsel.</p> <p>6 Read back the question.</p> <p>7 (The reporter read from the</p> <p>8 record as requested.)</p> <p>9 MR. FINCH: To the extent</p> <p>10 you can answer that without</p> <p>11 revealing privileged</p> <p>12 communications, you may do so. I</p> <p>13 don't think it calls for</p> <p>14 privileged communications on its</p> <p>15 face.</p> <p>16 MR. SCHIAVONI: Again, we</p> <p>17 take the position that this</p> <p>18 constitutes the comprehensive</p> <p>19 waiver, to the extent you are</p> <p>20 testifying about the understanding</p> <p>21 of the committee.</p> <p>22 MR. FINCH: No. He's</p> <p>23 testifying about the position of</p> <p>24 the committee and what the</p>	<p>Page 489</p> <p>1 briefs filed in the court, which</p> <p>2 is that at some theoretical level,</p> <p>3 since the committee has not</p> <p>4 undertaken to any sort of specific</p> <p>5 factual investigation on this</p> <p>6 subject, that there are or could</p> <p>7 be claims that under CGL</p> <p>8 non-products limits would be for</p> <p>9 insurance purposes covered by the</p> <p>10 same CGL coverage that Libby</p> <p>11 claimants' claims are, i.e. under</p> <p>12 non-products coverage if the Libby</p> <p>13 claimants' claims are covered by</p> <p>14 non-products coverage.</p> <p>15 The point being that the</p> <p>16 committee's position is that</p> <p>17 whatever the Libby claimants</p> <p>18 assert to be the unique or</p> <p>19 identifying characteristics of</p> <p>20 their claims that would bring them</p> <p>21 under the, quote, non-products,</p> <p>22 close quote, coverage of certain</p> <p>23 Grace CGL policies, that there are</p> <p>24 other claimants who either have or</p>

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1 Q. I hand you a document that
2 has been marked as ACC 30(b)(6)-18, and
3 for the information of those in the room
4 and on the telephone, this is Exhibit-8
5 from the Plan Exhibit Book, namely the
6 Best Interest Analysis.

7 A. I have it.

8 Q. Now, in that document, Grace
9 places a value of \$500 million on Grace's
10 unsettled insurance rights.

11 Does the asbestos personal
12 injury -- strike that.

13 Does the Asbestos PI
14 Committee agree with that figure?

15 MR. FINCH: Object to form.

16 MS. BAIER: Objection.

17 MR. FINCH: And object on
18 privilege grounds and instruct
19 witness not to answer to the
20 extent that that would divulge the
21 disclosure of privileged
22 communications for or work product
23 communications.

24 If you have an understanding

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1 independent of that based on
2 things that you have learned or
3 the committee has learned from
4 sources not protected by the
5 privilege, you can answer.

6 MS. BAIER: I will object to
7 form. It assumes things not in
8 the record.

9 THE WITNESS: All the
10 committee knows about this is set
11 forth in Note D to this exhibit,
12 which specifies that the insurance
13 recovery is based on the current
14 book value of the insurance asset
15 (\$500 million). The Note goes on
16 to say that the ultimate amount of
17 the insurance received will depend
18 on a number of factors, and then
19 lists the factors.

20 This is a document that was
21 prepared by Grace, and the
22 committee has accepted it from
23 Grace as being what it purports to
24 be, Grace's analysis of the

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1 application of a Bankruptcy
2 Chapter 7 liquidation test.

3 BY MR. COHN:

4 Q. Would the Asbestos PI
5 Committee agree that that figure, namely
6 the \$500 million value, represents the
7 best available figure for purposes of
8 Plan confirmation?

9 MR. FINCH: Object to form,
10 mischaracterizes prior testimony.

11 THE WITNESS: I don't even
12 know what you mean for purposes of
13 Plan confirmation.

14 It's proffered, as I
15 understand it, for a very limited
16 purpose, determining what would
17 happen in the event of a
18 hypothetical Chapter 7 liquidation
19 as compared with what is projected
20 to happen in this proposed Chapter
21 11 reorganization.

22 As proposed as a projection
23 for that purpose and given that
24 the committee is a Plan proponent,

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1 I take it, it is fair to say that
2 the committee has accepted that
3 number as described for that
4 purpose.

5 BY MR. COHN:

6 Q. Who drafted the Asbestos
7 Insurance Entity Injunction?

8 A. That was the product of a
9 group effort along with the rest of the
10 Plan. I don't recall who crafted the
11 first draft of what is ultimately in the
12 Plan.

13 Q. What is the purpose of the
14 Asbestos Insurance Entity Injunction?

15 A. My understanding of the
16 purpose is that its principal rationale
17 is that there is a variety of types of
18 insurance rights that are being
19 transferred to the Trust for the benefit
20 of all Trust beneficiaries as part of
21 what I will call the deal reflected in
22 this Plan.

23 In order to prevent
24 individual Trust beneficiaries from

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1 seeking disproportionate shares of
2 insurance through direct actions or
3 otherwise, the injunction was crafted in,
4 I might add, many earlier cases than this
5 one, perhaps not in precisely the same
6 language, but the concept has been around
7 for a while, to protect the Trust and its
8 beneficiaries from having people do what
9 I would call jumping the queue in getting
10 disproportionate or attempting to get
11 disproportionate shares of insurance that
12 should be shared by all.

13 MR. COHN: Let's go off the
14 record for a second.
15 (There was a discussion held
16 off the record at this time.)

17 BY MR. COHN:

18 Q. Directing your attention to
19 what has been marked ACC 30(b)(6)
20 Exhibit-4.

21 A. Yes.

22 Q. Namely, the Asbestos
23 Insurance Transfer Agreement?

24 A. Yes.

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1 Q. Which is Exhibit-6 to the
2 Plan Exhibit Book.

3 A. Yes.

4 Q. Does that agreement assign
5 to the Asbestos PI Trust the claims of
6 individual asbestos PI claimants against
7 insurers for their own misconduct?

8 MR. FINCH: Object to form.

9 MR. SCHIAVONI: Objection to
10 form.

11 THE WITNESS: I don't
12 believe this agreement assigns
13 claims to the Trust at all. This
14 agreement assigns insurance
15 rights, according to my
16 understanding of the agreement.
17 How claims wind up in the Trust is
18 by the Asbestos Permanent
19 Channelling Injunction.

20 BY MR. COHN:

21 Q. So --

22 A. And the Asbestos Insurance
23 Injunction indirectly, perhaps. But
24 primarily Asbestos Permanent Channelling

Libby

1 Injunction.

2 Q. So the Asbestos PI Trust
3 will not end up holding -- strike that.

4 Would the committee agree
5 that the Asbestos PI Trust will not end
6 up holding claims of individual asbestos
7 PI claimants against insurers for their
8 own misconduct?

9 MS. BAIER: Objection to
10 form.

11 MR. SCHIAVONI: Objection to
12 form, and, in addition, I would
13 say that the question calls for
14 the waiver of privilege. And I
15 would also ask Mr. Cohn that you
16 identify the topic of on your
17 30(b)(6) notice that this is
18 responsive to.

19 MS. BAIER: I would also
20 object to form, especially to the
21 word "holding."

22 I think it mischaracterizes
23 what the testimony has been and
24 confuses the issue by asking what

1 the Trust holds. I don't think
2 the Trust holds things.

3 MR. FINCH: I object to
4 form. I disagree that it calls
5 for privileged information.

6 MR. COHN: With that, would
7 the witness do his best.

8 THE WITNESS: The Trust
9 certainly isn't going to hold any
10 claims. It's going to have claims
11 asserted against it. The people
12 that hold the claims are the
13 claimants.

14 With respect to this, the
15 question about whether claims
16 involving the, quote, I think you
17 phrased it, independent tort
18 liability of insurers, close
19 quote, the problem I have
20 answering that question is that it
21 attempts to summarize in a single
22 phrase, which does not necessarily
23 have a precise legal meaning, a
24 complicated set of questions

PP Obj:
R;
BE

PP Obj:
R;
BE

<p>Libby</p> <p>CNA</p> <p>1 having to do with how the Asbestos</p> <p>2 Permanent Channelling Injunction</p> <p>3 works. PP Obj: R; BE</p> <p>4 The provisions in the</p> <p>5 Asbestos Permanent Channelling</p> <p>6 Injunction are very complex. As a</p> <p>7 general proposition, however, I</p> <p>8 would say that the claims that are</p> <p>9 being channelled to the Asbestos</p> <p>10 Personal Injury Trust are claims</p> <p>11 that are against the Debtors or</p> <p>12 against various other entities</p> <p>13 defined as asbestos-protected</p> <p>14 parties that arise in the manner</p> <p>15 that satisfies the requirements of</p> <p>16 Section 524(g), which has very</p> <p>17 specific language about what can</p> <p>18 and cannot be channelled to an</p> <p>19 Asbestos Personal Injury Trust</p> <p>20 under that section.</p> <p>21 What you are, in effect,</p> <p>22 trying to ask is does the phrase</p> <p>23 you have used fit within or</p> <p>24 without the terminology of Section</p> <p>Page 506</p>	<p>Page 508</p> <p>1 committee member.</p> <p>2 MR. COHN: It's covered by</p> <p>3 several of the topics, and I would</p> <p>4 really like to just go on.</p> <p>5 BY MR. COHN:</p> <p>6 Q. So the question is, will</p> <p>7 claims of individual asbestos PI</p> <p>8 claimants against insurers for their own</p> <p>9 misconduct be an asset of the Asbestos PI</p> <p>10 Trust?</p> <p>11 MS. BAIER: Objection.</p> <p>12 MR. FINCH: Objection to</p> <p>13 form.</p> <p>14 MR. SCHIAVONI: I would</p> <p>15 object, asked and answered.</p> <p>16 And I would remind</p> <p>17 Mr. Lockwood he has addressed this</p> <p>18 issue in other cases like</p> <p>19 Pittsburgh Corning and to the</p> <p>20 extent you need to go any further</p> <p>21 here, I think it raises a whole</p> <p>22 host of issues about waiver.</p> <p>23 MS. DeCRISTOFARO: Note my</p> <p>24 objection, too.</p> <p>PP Obj: BE; LO</p>
<p>CNA</p> <p>Libby</p> <p>1 524(g) where the term as such is</p> <p>2 not used. So I can't really</p> <p>3 answer the question yes or no as</p> <p>4 stated.</p> <p>5 All I can tell you is that</p> <p>6 the Asbestos Permanent Channelling</p> <p>7 Injunction, in my understanding,</p> <p>8 is not intended to channel to the</p> <p>9 Trust claims that Section 524(g)</p> <p>10 does not authorize to be</p> <p>11 channelled to the Trust.</p> <p>12 BY MR. COHN:</p> <p>13 Q. All right. We have gone a</p> <p>14 little afield from the question, so if I</p> <p>15 can go back and ask what I meant to, and</p> <p>16 let's try it again.</p> <p>17 MR. SCHIAVONI: Again,</p> <p>18 Mr. Cohn, we would ask you to</p> <p>19 identify in the notice where it is</p> <p>20 you identify this as a topic,</p> <p>21 because to the extent Mr. Lockwood</p> <p>22 is not designated by the committee</p> <p>23 on it, it's not really a proper</p> <p>24 question to pose to him by another</p> <p>Page 507</p>	<p>Page 509</p> <p>1 THE WITNESS: Would you read</p> <p>2 back the question, please?</p> <p>3 (The reporter read from the</p> <p>4 record as requested.)</p> <p>5 MS. DeCRISTOFARO:</p> <p>6 Objection.</p> <p>7 MR. FINCH: Objection.</p> <p>8 THE WITNESS: As phrased,</p> <p>9 the answer to that question is</p> <p>10 unequivocally no.</p> <p>11 MR. COHN: Thank you.</p> <p>12 BY MR. COHN:</p> <p>13 Q. Now, directing your</p> <p>14 attention to the Asbestos Insurance</p> <p>15 Entity Injunction, if an asbestos PI</p> <p>16 claimant has a claim against an insurer</p> <p>17 based on the insurer's own alleged</p> <p>18 misconduct, does the Asbestos Insurance</p> <p>19 Entity Injunction bar him from asserting</p> <p>20 that claim?</p> <p>21 MR. FINCH: Objection.</p> <p>22 MR. SCHIAVONI: Objection,</p> <p>23 calls for a legal conclusion and</p> <p>24 objection to form and the other</p> <p>PP Obj: BE; LO</p>

<p>Page 518</p> <p>1 litigation concerning the applicability 2 of and injunction similar to the Asbestos 3 Insurance Entity Injunction in any other 4 case? 5 MR. WISLER: Can you repeat 6 that? I didn't hear you, Dan. 7 BY MR. COHN: 8 Q. Are you aware of any 9 litigation concerning the scope of the 10 asbestos or an injunction similar to the 11 Asbestos Insurance Entity Injunction in 12 any other case? 13 A. The only litigation that I 14 am aware of that's remotely similar -- 15 and I don't profess to know all the 16 litigation that might be floating around 17 out there -- is actually litigation over 18 an entity that is closer to the Asbestos 19 Permanent Channelling Injunction. And 20 it's the Travelers injunction that's 21 presently before the United States 22 Supreme Court. To be more specific, it's 23 the Manville injunction that Travelers is 24 litigating about.</p>	<p>Page 520</p> <p>Libby</p> <p>1 asbestos personal injury claims against 2 or arising out of Grace is something that 3 has to be channelled to the Trust because 4 it fits within the definition of an 5 asbestos personal injury claim under 6 524(g), and that in order that Grace be 7 protected from such indemnity claims, the 8 roughly \$3 billion that Grace and various 9 related parties are paying to this Plan 10 is, in part, on behalf of those settled 11 insurers. 12 So if the question means, is 13 Maryland Casualty Company paying 14 something over and above what Grace is 15 paying, the answer is not to my 16 knowledge. 17 Q. Is there a benefit to the 18 Grace Bankruptcy Estate or to the 19 Asbestos PI Trust from having the 20 Asbestos PI Channelling Injunction 21 protect Maryland Casualty Company? 22 MR. FINCH: Object to that 23 question to the extent that it 24 calls for speculation.</p> <p>PP Obj: R</p>
<p>BNSF</p> <p>Libby</p> <p>1 Q. Has Maryland Casualty 2 Company paid or agreed to pay any money 3 or other consideration in order to be 4 covered by the Asbestos PI Channelling 5 Injunction? 6 A. Well, that depends on how 7 you use the term "pay." 8 The basis, which I take it 9 which is what you are asking for, for 10 Maryland Casualty being a protected party 11 to this Plan is that in the past, 12 Maryland Casualty Company has paid a lot 13 of money to Grace and entered into a 14 settlement agreement with Grace which 15 releases that coverage and which Grace 16 indemnifies it against claims. 17 As I testified, I believe, 18 on Friday, Grace, as part of this deal, 19 Grace has had two positions that it has 20 taken that we have -- we being the 21 committee and its representative -- 22 accepted. Number one is a claim for 23 indemnity from a settled insurer based on 24 claims against that insurer that are</p> <p>PP Obj: R</p>	<p>Page 521</p> <p>BNSF</p> <p>1 Mr. Wisler: Could you read 2 the question back, please? 3 MR. SCHIAVONI: Objection to 4 form; objection, calls for waiver; 5 objection, calls for legal 6 conclusion. 7 MR. FINCH: I disagree that 8 it calls for waiver. 9 But you can answer. 10 THE WITNESS: Could you 11 reread the question? 12 MR. COHN: Let's go off the 13 record for a second. 14 (There was a discussion held 15 off the record at this time.) 16 (The reporter read from the 17 record as requested.) 18 Mr. Wisler: I object to 19 Libby form. 20 THE WITNESS: Yes. 21 BY MR. COHN: 22 Q. What is that benefit? 23 MR. FINCH: You can answer 24 the question to the extent that it</p> <p>PP Obj: R</p>

<p>BNJSF Libby</p> <p>1 doesn't reveal privileged or work 2 product information. 3 THE WITNESS: The benefit to 4 the Grace Estate is that it 5 eliminates potential claims by 6 Maryland Casualty Company against 7 the Debtor and its Estate. That's 8 the benefit. 9 BY MR. COHN: 10 Q. Is there any agreement 11 between Grace and Maryland Casualty 12 Company which requires Grace to indemnify 13 Maryland Casualty Company for its own 14 misconduct? 15 MR. FINCH: Objection to the 16 extent that calls for a legal 17 opinion. And object to the extent 18 that there is information 19 responsive to this question that's 20 privileged, I instruct you not to 21 answer if it would reveal 22 privileged communications. 23 If you can answer the 24 question without revealing</p> <p>Page 522 PP Obj: R</p>	<p>Page 524</p> <p>1 Mr. Schiavoni for Arrowood. 2 We join your objection, and we 3 would also say this is outside the 4 scope of the designation and that 5 Mr. Lockwood doesn't have to 6 answer every single question no 7 matter what it is. This is not in 8 the designation. 9 MR. FINCH: Can we hear back 10 the question? 11 (The reporter read from the 12 record as requested.) 13 THE WITNESS: In my 14 understanding, there is an 15 agreement between Grace and 16 Maryland casualty company which 17 contains indemnification 18 provisions. I am not in a 19 position to express an opinion on 20 what the scope of that 21 indemnification is, much less 22 whether or not Grace and Maryland 23 Casualty agree on what the scope 24 of that indemnification is.</p>
<p>Page 523</p> <p>1 privileged communications, you can 2 do so -- 3 MR. SCHIAVONI: 4 Mr. Lockwood, I think -- 5 MR. FINCH: Tank, let me 6 finish. 7 MR. SCHIAVONI: Oh, I am 8 sorry. 9 MR. FINCH: But I still 10 object to the extent that it calls 11 for a legal opinion. 12 MS. BAIER: I also object. 13 You have asked Mr. Lockwood 14 whether he knows about -- you 15 haven't asked him about whether he 16 knows. You asked him is there an 17 agreement between Grace and 18 Maryland Casualty Company. I 19 object to the form. You are now 20 asking Mr. Lockwood to get into 21 the head of W.R. Grace. 22 MR. SCHIAVONI: I am sorry, 23 Mr. Finch. I didn't mean to 24 interrupt you before.</p>	<p>Page 525</p> <p>1 BY MR. COHN: 2 Q. Is it the position of the 3 Asbestos PI Committee that if the 4 indemnification provisions are construed 5 to protect Maryland Casualty from its own 6 misconduct, that such provisions would be 7 enforceable? 8 MR. FINCH: Object to form, 9 calls for a legal conclusion. 10 THE WITNESS: It actually 11 calls for speculation. 12 MR. FINCH: That, too. 13 THE WITNESS: In addition. 14 The committee's 15 understanding of the way this Plan 16 works, which is what expresses the 17 committee's position, is that it's 18 a legal question which, assuming 19 that a dispute on this subject 20 arises at some point in the 21 future, will be determined by 22 litigation over, A, what exactly 23 is the basis for the claim against 24 Maryland Casualty, legal and</p>

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CPO

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PP Obj:
R;
LO;
F

1 can't, he will say he can't answer
2 the question.

3 MR. SCHIAVONI: If the
4 answer is please refer to docket
5 number blankety-blank, then I
6 agree with you. If the answer is,
7 as the answers have been to the
8 other questions, then he's
9 obviously waived it, because there
10 is no file.

11 MR. WISLER: Objection.

12 MR. COHN: Would you like
13 the question read again?

14 THE WITNESS: No. I can
15 remember the question. Are you
16 still pressing?

17 MR. COHN: Sure.

18 THE WITNESS: The committee
19 has not filed either a joinder in
20 the objection or a response in
21 opposition to the objection, and I
22 have no idea whether the committee
23 is ever going to take a position
24 on the objection.

CPO

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CPO

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PP Obj:
R;
LO;
F

1 MR. COHN: Thank you,
2 Mr. Lockwood. No further
3 questions. I will pass the
4 witness to whoever is next.

5 Mr. Wisler: I think
6 Maryland Casualty will be next.
7 Can we have a 15-minute break,
8 please?

9 MR. FINCH: I prefer you not
10 have a 15-minute break. I will
11 give you five minutes. I would
12 like you to come down here so we
13 can hear you better.

14 MR. WISLER: Off the record.
15 (There was a discussion held
16 off the record at this time.)

17 (There was a break from 1:37
18 p.m. to 1:56 p.m.)

19 - - -

20 EXAMINATION

21 - - -

22 BY MR. WISLER:

23 Q. Mr. Lockwood, my name is
24 Jeffrey Wisler. I represent Maryland

PP Obj:
R;
LO;
F

1 Casualty Company and Zurich in this
2 bankruptcy case.
3 Mr. Lockwood, what is the
4 ACC's position as to the viability of
5 this Plan if the bankruptcy court finds
6 that one or more of the settled asbestos
7 insurance companies are not entitled to
8 524(g) protection?

9 MR. FINCH: Objection, calls
10 for speculation.

11 I instruct the witness not
12 to answer the question to the
13 extent it would reveal privileged
14 or work product-protected
15 communications or information. To
16 the extent you can answer the
17 question without so doing, you can
18 do so.

19 THE WITNESS: Well, it's a
20 hypothetical question, and it
21 really is unanswerable because it
22 would depend upon what the reason
23 that the court gave for denying
24 the protection. A lot of reasons

PP Obj:
R;
LO;
F

1 that the court might conceivably
2 give, if it gave such, might have
3 the effect of blowing up the Plan,
4 effectively. I mean, there would
5 be conditions to confirmation that
6 could not be satisfied nor waived.

7 On the other hand -- I don't
8 know. I haven't thought enough
9 about the permutations and
10 combinations to know whether there
11 could be some ground on which the
12 court could deny a particular
13 settled insurer the right to be a
14 protected party for some reason
15 that wouldn't apply sort of
16 generally to the Plan but which
17 could, somehow or another, either
18 the parties could waive that
19 that -- I really don't know.

20 The committee certainly
21 doesn't have a position on it,
22 because the committee, as my
23 answer has demonstrated so far,
24 hasn't thought through the

<p>CPD</p> <p>1 hypothetical circumstances that</p> <p>2 might produce the result that you</p> <p>3 posit.</p> <p>4 BY MR. WISLER:</p> <p>5 Q. Well, in your answer, you</p> <p>6 said that there are certainly scenarios</p> <p>7 where such a ruling could, I think you</p> <p>8 used the word, blowup the Plan.</p> <p>9 What would be some examples</p> <p>10 of that?</p> <p>11 MR. FINCH: Objection, form.</p> <p>12 MS. BAIER: Objection, calls</p> <p>13 for speculation.</p> <p>14 THE WITNESS: The Plan</p> <p>15 provides that a list in Exhibit-5</p> <p>16 of settled insurers are entitled</p> <p>17 to be protected parties under the</p> <p>18 Plan. The rationale for that, as</p> <p>19 I said earlier, was that they had</p> <p>20 potential indemnity claims against</p> <p>21 W.R. Grace.</p> <p>22 If, hypothetically, the</p> <p>23 court interpreted the statute to</p> <p>24 say that the on-behalf-of, that</p> <p>PP Obj: R; LO; F</p> <p>Page 534</p> <p>CPD</p> <p>PP Obj: R; LO; F</p>	<p>PP Obj: R; LO; F</p> <p>Page 536</p> <p>1 as Class 6 claims or no longer properly</p> <p>2 channelled?</p> <p>3 MR. FINCH: Object to form.</p> <p>4 THE WITNESS: Let me back</p> <p>5 up. Under bankruptcy law, a</p> <p>6 bankruptcy court doesn't have a</p> <p>7 line item veto under which they</p> <p>8 can exercise particular provisions</p> <p>9 in the Plan that they don't like</p> <p>10 but go ahead and confirm the rest</p> <p>11 of it. The Plan is an integrated</p> <p>12 whole. Judge Fitzgerald will</p> <p>13 either confirm the Plan or she</p> <p>14 will deny confirmation of the</p> <p>15 Plan.</p> <p>16 The scenario you posit, she</p> <p>17 would deny confirmation of the</p> <p>18 Plan because it purported to grant</p> <p>19 protected party status to entities</p> <p>20 that she said couldn't be</p> <p>21 protected, for whatever reason.</p> <p>22 At that point, everybody involved</p> <p>23 in this bankruptcy would have to</p> <p>24 sit down and figure out how to</p> <p>PP Obj: R; LO; F</p>
<p>CPD</p> <p>1 Grace somehow or another couldn't</p> <p>2 make a contribution on behalf of</p> <p>3 those settled insurers because</p> <p>4 they weren't putting in fresh</p> <p>5 money into the Plan so that Grace</p> <p>6 was left with no protection</p> <p>7 against indemnity claims because</p> <p>8 no claims against those insurers</p> <p>9 were being brought, that would go</p> <p>10 pretty far way to blowing up the</p> <p>11 Plan. At a minimum, it would</p> <p>12 require a whole renegotiation of</p> <p>13 the Plan, in my opinion, as to</p> <p>14 that hypothetical.</p> <p>15 BY MR. WISLER:</p> <p>16 Q. Because if an insurer -- let</p> <p>17 me make sure I understand what you are</p> <p>18 saying.</p> <p>19 You said that would go a</p> <p>20 long way towards destroying the Plan. Is</p> <p>21 that because, for instance, if a settled</p> <p>22 asbestos insurer with indemnity rights</p> <p>23 were not protected, then their indemnity</p> <p>24 claims would no longer be properly listed</p> <p>PP Obj: R; LO; F</p> <p>Page 535</p> <p>CPD</p>	<p>CPD</p> <p>Page 537</p> <p>1 deal with the problem that was</p> <p>2 created by that. And I have no</p> <p>3 idea how we would deal with the</p> <p>4 problem that would be created by</p> <p>5 that outcome.</p> <p>6 We certainly haven't -- we</p> <p>7 don't -- if the question is have</p> <p>8 we got a backstop Plan in the</p> <p>9 hopper that we can lay on the</p> <p>10 table, the answer is no.</p> <p>11 BY MR. WISLER:</p> <p>12 Q. What if the ruling was not</p> <p>13 so global per the example you gave, but</p> <p>14 individual, to say that one settled</p> <p>15 asbestos insurance company, for whatever</p> <p>16 reason, had not given or provided or</p> <p>17 there was not adequate consideration</p> <p>18 provided on behalf of that settled</p> <p>19 asbestos settled insurer?</p> <p>20 MR. FINCH: Objection to</p> <p>21 form, speculation.</p> <p>22 MS. BAIER: Objection. He's</p> <p>23 just answered that one.</p> <p>24 THE WITNESS: Yeah, I don't</p> <p>PP Obj: R; LO; F</p>

<p>CPO</p> <p>1 understand how -- Grace's</p> <p>2 consideration is a lump sum of</p> <p>3 stuff, notes, cash, warrants,</p> <p>4 insurance, what have you.</p> <p>5 And, as I analyzed it</p> <p>6 earlier, it's the committee's</p> <p>7 stated position that the statute</p> <p>8 allows Grace under those</p> <p>9 circumstances to designate</p> <p>10 insurers that it settled with and</p> <p>11 have indemnity claims for</p> <p>12 protection against asbestos</p> <p>13 personal injury claims in the</p> <p>14 future.</p> <p>15 I don't know any basis on</p> <p>16 which a court could say that,</p> <p>17 these 12 asbestos settled insurers</p> <p>18 are just okeydoke to get</p> <p>19 protection under that approach,</p> <p>20 but Insurer Y, for some reason or</p> <p>21 another, isn't. So I can't even</p> <p>22 speculate what your hypothetical</p> <p>23 would entail, much less what its</p> <p>24 consequences would be.</p> <p>PP Obj: R; LO; F</p> <p>Page 538 CPO</p>	<p>Page 540</p> <p>1 or wasn't properly settled or</p> <p>2 whatever, at that point, I</p> <p>3 don't -- the Plan does not purport</p> <p>4 to provide blanket protection.</p> <p>5 It provides protection for</p> <p>6 claims that fit within the</p> <p>7 definitions of the Plan, and if</p> <p>8 somehow or another the court</p> <p>9 determines that some particular</p> <p>10 claim doesn't fit within the</p> <p>11 definitions of the claims that</p> <p>12 either are or legally can be under</p> <p>13 524(g) channelled to the Trust,</p> <p>14 then, in my opinion, that would</p> <p>15 not result in the Plan failing a</p> <p>16 condition of the sort I talked</p> <p>17 about earlier. Whether or not</p> <p>18 there could be other consequences</p> <p>19 of such a ruling is a different</p> <p>20 matter.</p> <p>21 BY MR. WISLER:</p> <p>22 Q. Let's talk about that</p> <p>23 because you just described the</p> <p>24 possibility that the court could rule</p> <p>PP Obj: R; LO; F; BE</p>
<p>CPO</p> <p>1 BY MR. WISLER:</p> <p>2 Q. So in the ACC's view, all</p> <p>3 the settled asbestos insurance companies</p> <p>4 sort of ride together in terms of whether</p> <p>5 they are entitled to 524(g) protection?</p> <p>6 MR. FINCH: Objection,</p> <p>7 mischaracterizes prior testimony;</p> <p>8 object to the form.</p> <p>9 MR. WISLER: If I</p> <p>10 mischaracterize it, please</p> <p>11 clarify.</p> <p>12 THE WITNESS: The only</p> <p>13 caveat I would say to that is the</p> <p>14 one that we spent some time</p> <p>15 dancing around with Mr. Cohn</p> <p>16 earlier, that if there was some</p> <p>17 sort of ruling that some certain</p> <p>18 claims couldn't properly be</p> <p>19 channelled against a particular</p> <p>20 insurer while other claims could</p> <p>21 be, i.e. his notional independent</p> <p>22 tort claims versus claims that are</p> <p>23 clearly asbestos PI claim that</p> <p>24 says the coverage isn't exhaustive</p> <p>PP Obj: R; LO; F</p> <p>Page 539 CPO Libby</p> <p>PP Obj: R; LO; F; BE</p>	<p>Page 541</p> <p>1 that some certain claims, in your words,</p> <p>2 were not properly channelled.</p> <p>3 Is it the ACC's position</p> <p>4 that indemnity claims of a settled</p> <p>5 asbestos insurance company would result</p> <p>6 from those some certain claims would then</p> <p>7 no longer be classified as Class 6 and</p> <p>8 channelled to the Trust?</p> <p>9 MR. FINCH: Objection, form.</p> <p>10 MS. BAIER: Can you read</p> <p>11 that over, please?</p> <p>12 (The reporter read from the</p> <p>13 record as requested.)</p> <p>14 MS. BAIER: Objection as to</p> <p>15 form.</p> <p>16 THE WITNESS: If I</p> <p>17 understand the question and</p> <p>18 speaking at a somewhat high level</p> <p>19 of generality, if a claim against</p> <p>20 a settled insurer were ruled not</p> <p>21 to be channelled to the Trust in</p> <p>22 the first instance, because it</p> <p>23 didn't fit within -- because of</p> <p>24 one of two reasons: Either it</p> <p>PP Obj: R; LO; F; BE</p> <p>PP Obj: R; LO; BE; F</p>

PP Obj:

R; LO; BE; F

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1 didn't fit within the definition
 2 or, alternatively, even though it
 3 might be read to fit within the
 4 definition, it could not be under
 5 Section 524(g) so channelled, you
 6 just weren't legally permitted to
 7 do so, and the claim went forward,
 8 and an indemnity claim were to
 9 arise out of that claim, then it
 10 is the position of the ACC that
 11 that indemnity claim would not be
 12 a Class 6 claim, because, by
 13 definition, it didn't arise out of
 14 an asbestos personal injury claim.
 15 It arose out of something that the
 16 court had decided since it wasn't
 17 channelled was, by definition, not
 18 an asbestos personal injury claim.

19 BY MR. WISLER:

20 Q. Is the ACC in agreement with
 21 Exhibit-5 of the exhibit book? Are you
 22 familiar with that exhibit?

23 A. I am generally familiar with
 24 it. The ACC, as a Plan proponent, is --

CPO

1 You can answer.
 2 THE WITNESS: I don't know
 3 that the ACC has a position on
 4 what kind of claim it would be at
 5 that point.

6 MR. WISLER: Okay. Thank
 7 you.

8 - - -

9 EXAMINATION

10 - - -

11 BY MR. MANGAN:

12 Q. Mr. Lockwood, Kevin Mangan
 13 on behalf of the State of Montana. I
 14 have a few follow-up questions from
 15 Mr. Cohn.

16 Specifically, I am going to
 17 refer you to ACC Document 11, which is
 18 Exhibit-4. It's the TDP.

19 A. Yes, sir.

20 Q. If you could flip to Section
 21 5.7?

22 A. Section 5.7 of the TDP.

23 Q. Correct.

24 A. Evidentiary Requirements?

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PP Obj:
R;
LO; BE

CPO

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1 if what you mean by is in agreement with
 2 it, we are sponsoring a Plan of which
 3 it's an exhibit. So I guess you could
 4 say we are in agreement with it.

5 MR. WISLER: That's all I

6 have. Thank you, Mr. Lockwood.

7 MR. MANGAN: Hello. This is
 8 Kevin Mangan on the phone.

9 MR. WISLER: One second,
 10 please.

11 MR. MANGAN: Sure, Jeff.

12 MR. WISLER: I am sorry.

13 Just one follow-up. I apologize.

14 BY MR. WISLER:

15 Q. Mr. Lockwood, in response to
 16 my next-to-the-last question, you
 17 testified that the claim we were
 18 discussing -- and I am not going to try
 19 to repeat all the words -- would not be a
 20 Class 6 claim.

21 Is it the ACC's position
 22 that it would then under this Plan be a
 23 Class 9 claim?

24 MR. FINCH: Object to form.

PP Obj:
R; LO;
BE; FPP Obj:
R;
LO;
BE

1 Q. Right. Specifically,
 2 5.7(a)(1).

3 A. Correct.

4 Q. If you could take a second
 5 and take a look at that.

6 A. Including the subsections
 7 (a), (b) and (c) or just the lead in
 8 (a)(1)?

9 Q. Just (a)(1).

10 A. Okay.

11 Q. You see the (a)(1) requires
 12 a ten-year latency period.

13 A. Correct.

14 Q. The period between the first
 15 exposure and diagnosis.

16 Why a ten-year latency
 17 period?

18 A. It's my understanding that
 19 that is generally considered by the
 20 medical profession to be the minimum
 21 latency period for asbestos-related
 22 diseases to manifest themselves.

23 Q. And is that how that number
 24 came up with, to the best of your

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<p style="text-align: right;">Page 550</p> <p>1 Linda Casey. I am with Pepper Hamilton.</p> <p>2 I represent BNSF Railway Corporation.</p> <p>3 Mr. Lockwood, are you aware</p> <p>4 that BNSF asserts that Grace purchased</p> <p>5 insurance policies that named BNSF as the</p> <p>6 at that name insurer upon which Grace was</p> <p>7 not also a named insured?</p> <p>8 MR. FINCH: Object to form,</p> <p>9 foundation.</p> <p>10 THE WITNESS: I believe I</p> <p>11 recall seeing Grace make such an</p> <p>12 assertion.</p> <p>13 MS. BAIER: Objection.</p> <p>14 THE WITNESS: I am not sure,</p> <p>15 frankly, however, whether it was</p> <p>16 Grace that made the assertion or</p> <p>17 BNSF made the assertion. I know</p> <p>18 somebody has made the assertion.</p> <p>19 BY MS. CASEY:</p> <p>20 Q. Okay. The follow-up</p> <p>21 question I have on that is, is it the</p> <p>22 ACC's position that as to settled</p> <p>23 insurance companies, settled asbestos</p> <p>24 insurance companies, to the extent that</p> <p style="text-align: right;">PP Obj: R; BE; F; LO</p>	<p style="text-align: right;">Page 552</p> <p style="text-align: right;">Arrowood Obj: F; S; L; I; H</p> <p>1 THE WITNESS: As I hear the</p> <p>2 question and as I interpret the</p> <p>3 Plan, an insurance policy</p> <p>4 purchased by Grace for BNSF, which</p> <p>5 did not provide coverage to Grace,</p> <p>6 only provided coverage to BNSF,</p> <p>7 claims by BNSF would not be</p> <p>8 enjoined unless Grace had somehow</p> <p>9 or another indemnified that</p> <p>10 settled insurer against claims by</p> <p>11 BNSF.</p> <p style="text-align: right;">Arrowood Ctr.</p> <p>12 And then in that</p> <p>13 hypothetical situation, since I</p> <p>14 haven't seen the policies and have</p> <p>15 no idea what, if any,</p> <p>16 indemnifications they have in</p> <p>17 them, there might be a situation</p> <p>18 in which if the claim by BNSF</p> <p>19 against that policy was an</p> <p>20 asbestos personal injury claim and</p> <p>21 Grace had indemnified that insurer</p> <p>22 against that claim, then under</p> <p>23 those circumstances, as I</p> <p>24 understand the Plan, that claim</p> <p style="text-align: right;">PP Obj: R; BE; F; LO</p>
<p style="text-align: right;">Page 551</p> <p style="text-align: right;">PP Obj: R; BE; F; LO</p> <p>1 they had, in fact, issued policies to be</p> <p>2 in BNSF where BNSF is the named insurer,</p> <p>3 that the channelling injunction will</p> <p>4 enjoin BNSF post-confirmation from</p> <p>5 asserting coverage claims against the</p> <p>6 settled asbestos insurance company under</p> <p>7 those policies?</p> <p>8 MR. FINCH: Objection --</p> <p>9 MS. BAIER: Objection to</p> <p>10 form.</p> <p>11 MR. PERNICONE: Objection.</p> <p>12 MR. FINCH: -- form,</p> <p>13 speculation.</p> <p>14 To the extent you can</p> <p>15 answer the question without</p> <p>16 revealing privileged</p> <p>17 communications or work product,</p> <p>18 you can do so.</p> <p>19 MR. SCHIAVONI: This is</p> <p>20 Schiavoni. I object to form, and</p> <p>21 I also object to this being</p> <p>22 outside the scope of the</p> <p>23 designation, and calling for a</p> <p>24 legal conclusion.</p> <p style="text-align: right;">Arrowood Obj: F; S; L; I; H</p>	<p style="text-align: right;">Page 553</p> <p style="text-align: right;">Arrowood Obj: F; S; L; I; H</p> <p>1 might well be channelled to the</p> <p>2 Trust. But, as I said before, I</p> <p>3 have no idea whether any such</p> <p>4 indemnification provision exists</p> <p>5 or not.</p> <p>6 BY MS. CASEY:</p> <p>7 Q. I am not sure if I</p> <p>8 understand your answer.</p> <p>9 The claim that BNSF would</p> <p>10 have against the insurer would be</p> <p>11 channelled or the claim the insurer would</p> <p>12 have against Grace for indemnification</p> <p>13 would be channelled, or both?</p> <p>14 MS. BAIER: Objection as to</p> <p>15 form. It's a hypothetical,</p> <p>16 speculative question.</p> <p>17 MR. SCHIAVONI: Also, I</p> <p>18 think it calls for speculation</p> <p>19 given the nature of the answer</p> <p>20 that was given.</p> <p style="text-align: right;">Arrowood Obj: S</p> <p>21 THE WITNESS: Well, it</p> <p>22 clearly calls for speculation.</p> <p>23 The answer is, in theory,</p> <p>24 both; in reality, only the first,</p> <p style="text-align: right;">PP Obj: R; BE; F; LO</p>

<p>BNSF</p> <p>1 as my colloquy with Mr. Brown on</p> <p>2 Friday, I believe, expressed,</p> <p>3 which is that if the claim were,</p> <p>4 in fact, an asbestos personal</p> <p>5 injury claim that was indemnified</p> <p>6 by Grace, then the claim by BNSF</p> <p>7 against the insurer would be</p> <p>8 enjoined.</p> <p>9 Once the claim is enjoined,</p> <p>10 there will be no opportunity for</p> <p>11 the insurer to in turn. Have an</p> <p>12 indemnity claim against Grace.</p> <p>13 If the claim is somehow or</p> <p>14 another not enjoined, then it</p> <p>15 wouldn't be channelled to the</p> <p>16 Trust because the only basis on</p> <p>17 which it could not be enjoined was</p> <p>18 that it was not an asbestos</p> <p>19 personal injury claim in the first</p> <p>20 place. And the Trust picks up</p> <p>21 indemnity liabilities with respect</p> <p>22 to Grace for claims that arise out</p> <p>23 of asbestos personal injury</p> <p>24 claims.</p> <p>PP Obj: R; LO; BE; F</p> <p>Arrowood Obj: F; LC; S; H</p> <p>Page 554</p>	<p>BNSF</p> <p>1 scenario, but I cannot flatly say</p> <p>2 that there is no conceivable</p> <p>3 combination of facts that might</p> <p>4 preclude that result from taking</p> <p>5 place.</p> <p>6 BNSF is suing, by</p> <p>7 hypothesis, for coverage of a</p> <p>8 claim against BNSF. What is that</p> <p>9 claim? If somehow or another that</p> <p>10 claim fell within the definition</p> <p>11 of asbestos personal injury claim,</p> <p>12 as defined in the Plan, which I</p> <p>13 don't know whether it would or</p> <p>14 wouldn't, but theoretically it</p> <p>15 might, and if BNSF were held</p> <p>16 liable on that asbestos personal</p> <p>17 injury claim, brought a suit</p> <p>18 against that insurer on the</p> <p>19 separate policy, the insurer</p> <p>20 somehow or another produces what</p> <p>21 seems to me to be highly unlikely,</p> <p>22 which is an indemnity from Grace,</p> <p>23 saying that not only did we</p> <p>24 purchase this insurance policy for</p> <p>Arrowood Obj: LC; S; F; H</p> <p>PP Obj: R; LO; BE; F</p> <p>Page 556</p>
<p>BNSF</p> <p>1 But, again, I have no idea</p> <p>2 what kind of claims we are talking</p> <p>3 about here, so this is purely at a</p> <p>4 theoretical level of how the Plan</p> <p>5 would work on unspecified facts</p> <p>6 and unspecified contractual</p> <p>7 undertakings.</p> <p>8 BY MS. CASEY:</p> <p>9 Q. Let me ask it a different</p> <p>10 way then.</p> <p>11 Is it the ACC's position</p> <p>12 that the Plan under any circumstances can</p> <p>13 enjoin BNSF from asserting its contract</p> <p>14 rights against the insurers where Grace</p> <p>15 purchased the policy but has not been a</p> <p>16 beneficiary under the policy?</p> <p>17 MR. FINCH: Objection, form.</p> <p>18 MS. DeCRISTOFARO: Objection</p> <p>19 to form.</p> <p>20 MR. SCHIAVONI: Objection to</p> <p>21 form, calls for a legal</p> <p>22 conclusion, calls for speculation.</p> <p>23 THE WITNESS: It is very</p> <p>24 hard for me to imagine that</p> <p>PP Obj: R; LO; BE; F</p> <p>Arrowood Obj: F; LC; S; H</p> <p>Page 555</p>	<p>BNSF</p> <p>1 BNSF's benefit but we gave the</p> <p>2 insurer an indemnity that it would</p> <p>3 never have to pay any money on the</p> <p>4 policy, then it's possible that</p> <p>5 that claim could wind up being</p> <p>6 enjoined because it gave rise to</p> <p>7 an indemnity or would give rise to</p> <p>8 an indemnity claim against Grace</p> <p>9 for an asbestos personal injury</p> <p>10 claim.</p> <p>11 The problem is it is so</p> <p>12 inconceivable to me that Grace</p> <p>13 could give an indemnity to an</p> <p>14 insurer for a policy that didn't</p> <p>15 cover Grace but was purchased for</p> <p>16 BNSF and which hypothesis had</p> <p>17 never been exhausted. I can't</p> <p>18 imagine how that could come about.</p> <p>19 So you are forcing me, when</p> <p>20 you give me these hypotheticals,</p> <p>21 to dream up scenarios under which</p> <p>22 the hypothetical might possibly</p> <p>23 apply, no matter how unrealistic</p> <p>24 the scenario appears to me to be.</p> <p>Arrowood Obj: LC; S; LF; H</p> <p>PP Obj: R; LO; BE; F</p> <p>Page 557</p>

<p>BNSF</p> <p>1 And that scenario to me appears to</p> <p>2 be extraordinarily unrealistic, if</p> <p>3 not impossible.</p> <p>4 BY MS. CASEY:</p> <p>5 Q. I would like you to turn to</p> <p>6 Exhibit ACC Exhibit-11.</p> <p>7 MR. FINCH: The TDP?</p> <p>8 MS. CASEY: Yes, the TDP.</p> <p>9 THE WITNESS: Okay. I have</p> <p>10 it.</p> <p>11 BY MS. CASEY:</p> <p>12 Q. And specifically 5.12.</p> <p>13 A. I have it.</p> <p>14 Q. Okay. 5.12 by its terms</p> <p>15 applies to claims that BNSF and others</p> <p>16 would have against settled asbestos</p> <p>17 insurance companies. Let me ask an</p> <p>18 initial question.</p> <p>19 It is the ACC's position</p> <p>20 that the Asbestos Insurance Entity</p> <p>21 Injunction also enjoins asbestos claims</p> <p>22 as defined by the Plan from being</p> <p>23 asserted against unsettled asbestos</p> <p>24 insurance companies, correct?</p> <p>BNSF</p> <p>BNSF</p> <p>BNSF</p> <p>Libby</p> <p>BNSF</p>	<p>Page 558</p> <p>PP Obj: R; LO; BE; F</p> <p>Approved Obj: L; S; F; H</p> <p>Libby</p> <p>BNSF</p> <p>1 regarding cash portion. I am not sure I</p> <p>2 understand the basis for saying that the</p> <p>3 channelling of the indemnification claims</p> <p>4 constitutes a substantial contribution to</p> <p>5 the Plan or a benefit to the Plan, to the</p> <p>6 asbestos claimants.</p> <p>7 Can you explain how that</p> <p>8 constitutes a benefit?</p> <p>9 MR. FINCH: Objection,</p> <p>10 mischaracterizes prior testimony.</p> <p>11 THE WITNESS: I don't</p> <p>12 believe I testified that that was</p> <p>13 a benefit to the Trust.</p> <p>14 The channelling of the</p> <p>15 claims, the indemnity claims,</p> <p>16 against Grace, I testified was a</p> <p>17 benefit to the Grace Estate.</p> <p>18 The statute, in general,</p> <p>19 says that a protected party has to</p> <p>20 have something contributed on its</p> <p>21 behalf to the Trust in exchange</p> <p>22 for the injunction. That's a very</p> <p>23 broad paraphrase to the statute.</p> <p>24 So the protection for the</p> <p>Page 560</p> <p>PP Obj: R; BE; LO</p>
<p>BNSF</p> <p>1 A. In general, that's true.</p> <p>2 The language is very specific as to what</p> <p>3 kind of claims that it enjoins against</p> <p>4 non-settled insurers, but subject to the</p> <p>5 caveat that you have to look at the</p> <p>6 definition to know exactly which kind of</p> <p>7 claims you are talking about, yes.</p> <p>8 Q. Does the TDP have a</p> <p>9 provision by which BNSF Railway can</p> <p>10 assert its enjoined claims against the</p> <p>11 unsettled asbestos insurance companies?</p> <p>12 MR. SCHIAVONI: Objection to</p> <p>13 form.</p> <p>14 THE WITNESS: At the moment,</p> <p>15 I can't think of anything.</p> <p>16 BY MS. CASEY:</p> <p>17 Q. Okay. My final questions</p> <p>18 concern the contribution that Grace is</p> <p>19 allegedly providing to the Plan on behalf</p> <p>20 of the insurance companies for the</p> <p>21 benefit of the 524(g) injunction.</p> <p>22 I understand the cash</p> <p>23 portion -- at least I understand the</p> <p>24 argument that the ACC is present</p> <p>Libby</p> <p>BNSF</p> <p>PP Obj: R; LO; BE; F</p> <p>Approved Obj: S; H</p> <p>PP Obj: R; BE; LO</p>	<p>Page 559</p> <p>Libby</p> <p>BNSF</p> <p>1 settled insurance company is the</p> <p>2 injunction. The benefit to the</p> <p>3 Trust, which if it, in effect,</p> <p>4 purchases that protection, is the</p> <p>5 Grace contribution, which Grace is</p> <p>6 making on behalf of itself and</p> <p>7 multiple other entities.</p> <p>8 BY MS. CASEY:</p> <p>9 Q. The cash contribution?</p> <p>10 A. Well, the entirety of the</p> <p>11 contribution. There is cash; there is</p> <p>12 notes; there is warrant; there is</p> <p>13 insurance; and there is the Grace</p> <p>14 Estate's claim against Fresenius and</p> <p>15 Sealed Air.</p> <p>16 You will recall that</p> <p>17 Fresenius and -- the committee -- the two</p> <p>18 committees, the PI and the PD committees,</p> <p>19 brought claims against Sealed Air and</p> <p>20 Fresenius on behalf of the Grace Estate.</p> <p>21 So when those claims were settled, they</p> <p>22 were not only settled by the entities</p> <p>23 against which they were brought, namely,</p> <p>24 Sealed Air and Fresenius, but, to the</p> <p>Page 561</p> <p>PP Obj: R; BE; LO</p>

BNST

PP Obj.

R; BE; LO

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1 extent that the proceeds of those
2 settlements wind up in the Grace Trust as
3 opposed to the Grace Estate for
4 distribution to other people, they are a
5 settlement part of Grace's contribution
6 to the Trust.

7 Q. Has the ACC attempted to
8 apportion or value those portions of the
9 contributions made by Grace that are upon
10 Grace's behalf versus upon the insurer's
11 behalf?

12 MR. FINCH: You can answer
13 that yes or no.

14 THE WITNESS: Well, I will
15 answer it no and add I am not sure
16 how anybody could go about doing
17 that. It's what is known as a
18 lump sum deal.

19 MS. CASEY: I have no
20 further questions.

21 MR. SCHIAVONI: Actually,
22 could we let Mr. Speights from
23 South Carolina go first.

24 MR. FINCH: You are up, Dan.

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1 MR. FINCH: Objection,
2 foundation.

3 BY MR. SPEIGHTS:

4 Q. Yes, you personally.

5 A. No.

6 Q. Was your law firm?

7 MR. FINCH: Objection, form,
8 foundation, relevance.

9 THE WITNESS: It depends on
10 how you define negotiations when
11 it comes to dealing with a
12 congressional enactment. My
13 partner, Mr. Inselbuch, to my
14 knowledge, had at least one
15 meeting with Senator Heflin on the
16 subject of the statute.

17 What other discussions,
18 either in committee or outside
19 committee or whatever,
20 Mr. Inselbuch might have been
21 involved with, I really don't
22 know. But he's being deposed on
23 June 12th, and I guess you could
24 ask him.

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1 - - -

2 EXAMINATION

3 - - -

4 BY MR. SPEIGHTS:

5 Q. Mr. Lockwood, were you
6 involved in the negotiation of the 524 --
7 strike that.

8 Were you involved in the --

9 MS. BAIER: Dan, can you
10 speak up or come closer to the
11 phone or something?

12 THE WITNESS: Nobody can
13 hear you.

14 MR. SPEIGHTS: I picked up
15 the phone. I am not on speaker.

16 MR. FINCH: Now we can hear
17 you.

18 THE WITNESS: That's better.

19 MR. FINCH: That's better.

20 BY MR. SPEIGHTS:

21 Q. Let me start over again.
22 Mr. Lockwood, were you involved in the
23 negotiation of the 524(g) statute?

24 A. Me personally?

1 BY MR. SPEIGHTS:

2 Q. Would you agree with me that
3 the 524(g) statute always refers to the
4 word "Trust" in singular rather than
5 plural?

6 A. I would have to go back and
7 look at the statute to be sure of that.
8 If you tell me it does, I am not going to
9 argue with you about it.

10 Q. Well, I am actually not
11 going to tell you anything. But if you
12 don't recall without looking at the
13 statute, I certainly would accept that
14 answer.

15 A. I do not specifically recall
16 without looking at the statute.

17 Q. Do you recall any bankruptcy
18 that was contested and provides for two
19 asbestos trusts, two or more asbestos
20 trusts?

21 A. Do you mean a bankruptcy
22 where the Plan proposed to create two
23 trusts, and somebody said there could
24 only be one and that was the contest and

PP Obj.
R; BE; LO

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1 the court ruled on that?

2 Q. I will accept that.

3 A. I don't think I do recall

4 any such bankruptcy.

5 Q. How many bankruptcies do you

6 recall where there had been separate

7 trusts of property damage and personal

8 injury?

9 A. As I sit here right now, I

10 can't think of one. I believe there have

11 been some, but I am hard-pressed to

12 identify one from memory. This was not a

13 topic I was prepared to deal with:

14 My recollection, however, is

15 there were a number of bankruptcies in

16 which there was no property damage trust

17 at all, whether separate or as part of a

18 single trust to which PI trusts were also

19 channelled.

20 Q. Mr. Lockwood, what was the

21 status of the PI estimation proceedings

22 when the ACC agreed, at least in

23 principle, with the Debtors to resolve

24 this bankruptcy?

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1 A. There are others that are

2 probably better equipped to be precise

3 about that than I, but my general

4 recollection was that I believe that

5 Grace had basically completed putting on

6 its case. And it was before the PI and

7 FCR were putting on their case.

8 But I really was not --

9 unlike Mr. Finch, who is sitting here

10 next to me, who actually was involved in

11 trying that case, I wasn't. So I could

12 be wrong about that.

13 Q. Well, maybe you could

14 represent Mr. Finch, and I could question

15 him.

16 Regardless -- and by the

17 way --

18 A. Suffice it to say, there had

19 been a lot of witnesses put on by Grace

20 at the time the case was over -- excuse

21 me -- was postponed.

22 Q. What was your understanding

23 of Grace's position of the total amount

24 that should be paid to asbestos PI

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1 claimants, both present and future,

2 whenever it ended its presentation of the

3 estimation?

4 MS. BAIER: Objection as to

5 form.

6 MR. FINCH: Object to form.

7 THE WITNESS: My

8 recollection is that Grace had

9 various numbers on the table from

10 various witnesses, but they were

11 all way too low.

12 BY MR. SPEIGHTS:

13 Q. Well, what is your

14 recollection of the last number they were

15 using before you settled?

16 MS. BAIER: Objection as to

17 form.

18 MR. FINCH: Object form and

19 lack of -- well, maybe not lack of

20 foundation but lack of recall.

21 THE WITNESS: When you say

22 "they were using," using in what

23 context?

24 BY MR. SPEIGHTS:

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1 Q. Well, what is your

2 understanding of Grace's last position of

3 the total amount that should be paid to

4 asbestos present and future PI claimants

5 before the deal was negotiated with the

6 ACC?

7 MS. BAIER: Objection to

8 form.

9 MR. FINCH: Mr. Speights,

10 are you asking for his

11 recollection of what is the

12 estimate of the total present and

13 future liability for asbestos PI

14 claims put forward through the

15 testimony of Tom Florence in his

16 expert report and testimony that

17 occurred on March 31st, 2008, two

18 days before the company rested its

19 case?

20 MR. SPEIGHTS: Well, that

21 wasn't my question, but I will ask

22 that. If Mr. Lockwood knows the

23 answer to that, maybe that will

24 suffice.